

Before the  
Administrative Hearing Commission  
State of Missouri



LUCINDA GUTHRIE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-1463 AF
	)	
LAWRENCE REBMAN, DIRECTOR OF	)	
LABOR AND INDUSTRIAL RELATIONS,	)	
	)	
Respondent.	)	

**DECISION**

We grant Lucinda Guthrie’s application for attorney’s fees, and award her \$13,638.00 in attorneys’ and paralegal fees and \$1,974.24 in costs.

**Procedure**

Lawrence Rebman, the Director of the Department of Labor and Industrial Relations (“the Department”), dismissed Lucinda Guthrie from employment on February 4, 2013. On March 13, 2013, Guthrie appealed her discharge as Chief of Employer Contributions with the Division of Employment Security within the Department. On July 12, 2013, the Department filed a notice of reinstatement and motion to dismiss resolving all issues pertaining to the discharge and further agreeing to pay all reasonable attorney’s fees that the Commission may find proper under Sections 536.085 and 536.087 RSMo 2000.<sup>1</sup> We issued an order dismissing Guthrie’s complaint concerning her discharge on July 25, 2013.

---

<sup>1</sup> Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

Guthrie filed her application for attorney's fees on August 12, 2013. The Department filed an answer on September 6, 2013. We held a hearing on the application on December 9, 2013. At this hearing, Guthrie was represented by Roger G. Brown and David J. Moen of Roger G. Brown & Associates; representing the Department was Michael Pritchett and Bart Matanic. The last brief was filed on April 11, 2014 together with a supplemental Exhibit C-2 as to attorneys fees in this case.<sup>2</sup> An order granting leave for the filing of a supplemental response to Exhibit C-2 was entered on April 28, 2014, and this case became ready for decision.

Commissioner Audrey Hanson McIntosh, having read the full record including all the evidence, renders the decision. Section 536.080.2, RSMo 2000; *Angelos v. State Bd. of Regis'n for the Healing Arts*, 90 S.W.3d 189 (Mo. App., S.D. 2002).

### **Findings of Fact**

#### **The Underlying Action**

1. On March 13, 2013, Guthrie appealed her dismissal from the Department. Guthrie served as Chief of Employer Contributions, Division of Employment Security.
2. On July 12, 2013, Guthrie received a letter that reinstated her with all back pay and benefits as if there had been no break in service effective July 22, 2013.
3. The Department filed a motion for partial dismissal of Guthrie's complaint and then a "Notice of Reinstatement and Motion to Dismiss". Following a conference call on July 24, 2013 where the parties agreed that the motion for partial dismissal was moot, we issued an Order on July 25, 2013, dismissing Guthrie's complaint.
4. The parties also agreed in the conference call on July 24, 2013, that the only matter that requires resolution by this Commission is Guthrie's claim for attorney's fees.

---

<sup>2</sup> Guthrie's supplemental Exhibit C-2 removed some duplicative time slip entries and some entries that were not applicable to this case. It recalculated the number of hours and amount requested for attorneys' fees and paralegal fees.

5. Guthrie filed her application for attorney's fees and expenses on August 12, 2013.

Facts Related to this Application for Fees and Expenses

6. Guthrie worked with the State Unemployment Tax Act (SUTA) computer detection system, which allows the Department to find when companies rearranged their organization for the express purpose of obtaining a lower unemployment insurance tax rate or SUTA dumping. The federal government required a system to be in place and provided a computer program designed to detect SUTA dumping. Because of the age of the State's computer system and problems with the interface between the State's computer and the federal computer program, the State also had developed a parallel internal system to assist in detecting SUTA dumping. Guthrie's termination involved an alleged failure to detect SUTA dumping, which was within her responsibilities.

7. On Thursday, January 31, 2013, Rebman gave Guthrie the choice between retirement or termination and requested her to let him know her decision on Monday, February 4, 2013.

8. Guthrie contacted her supervisor, Gracia Backer, to advise her of the situation. Backer then contacted attorney Roger Brown because she was aware of his practice from her experience in state government, and she advised Brown of the situation.

9. Backer recommended Guthrie contact Brown because Backer believed that Brown had the expertise and background required to handle Guthrie's case. Backer understood that Guthrie fell under the state merit system and further believed Guthrie's legal claims might include age and gender discrimination, in addition to the SUTA dumping issue. Further, Backer was concerned that Rebman lacked authority to dismiss Guthrie.

10. Backer did not know of any attorney who would handle Guthrie's case for \$75 an hour.

11. Shortly after Guthrie was dismissed, Backer filed a claim concerning her own discharge, and was represented by Brown.

12. Guthrie did not ask any other attorney to take her case. She had the recommendation from Backer, and she immediately sought out Brown and obtained an appointment with him on Friday, February 1, 2013.

13. Guthrie and Brown prepared a letter for Guthrie to take into work on Monday to provide a timeline of compliance with the SUTA issues.

14. After Guthrie was terminated, other people called her and recommended Brown.

15. Guthrie found Brown to have good expertise in handling her case. She thought it was important that Brown handle her personnel matter as well as the complaint of discrimination that she filed with the Missouri Human Rights Commission. Brown pursued evidence and pleadings to show that it was for the good of the service that Guthrie be reinstated.

16. In her appeal, Guthrie unsuccessfully brought a motion for summary decision in which she argued that Rebman did not have the authority to dismiss her.

17. At the time of her discharge and application, Guthrie's net worth did not exceed two million dollars.

18. Guthrie was represented in the underlying action at all times by Brown. Brown billed \$275 per hour. Brown billed his paralegal's time, Rackers, at \$95 per hour.<sup>3</sup> Attorney Moen's time was billed at \$250 per hour. Staff named Nichols was billed out at \$75 per hour.<sup>4</sup> A combined total of 250.04 hours was ultimately submitted in the amount of \$58,271.91 claimed in attorney's fees and paralegal fees. This included time spent in work on this case through April 9, 2014.

---

<sup>3</sup> We assume that Rackers is the name of the paralegal, though not specifically identified other than by the billing records.

<sup>4</sup> We assume that Nichols is the name of another paralegal, though not specifically identified other than by the billing records.

19. Expenses of \$1,974.24 were not challenged by Rebman.

20. Moen is of counsel to Roger G. Brown & Associates. He rents office space and also works for Brown. Moen worked on Guthrie's case for attorneys' fees, represented Guthrie at the hearing, and also testified as an expert witness.

21. Moen has practiced law in Cole County for 21 years, after becoming licensed in 1991. He has practiced in the area of employment law, including merit system employees, employment discrimination, employment insurance, unemployment claims, and is generally familiar with attorneys in central Missouri who practice in that area. He testified as an expert witness.

22. Moen provided his opinion about the special factors that he believed justified attorneys' fees at a higher rate than \$75 per hour. Moen stated that there was a limited number of qualified attorneys who could handle Guthrie's case primarily because of the complicated reasons for Guthrie's dismissal including the "SUTA dumping" and the lack of a sophisticated computer system. He also characterized the litigation expertise necessary to prove "for the good of the service" as complicated. Moen was of the opinion that the combined causes of action—discrimination and merit system—also contributed as special factors.

23. Moen provided his opinion that an hourly rate of \$250 per hour was reasonable and that the rate of \$85 per hour for paralegal time was reasonable.

24. Other than Moen's testimony that the reasonable value of paralegal time was \$85 per hour and the actual billing (Exhibit C-2), there was no evidence of paralegal fees in this case. The paralegal fees were submitted as a part of the attorneys' fees billing.

25. There was no evidence as to the reasonable rate per hour of an expert witness in an attorneys' fees case.

26. Brown submitted Moen's time spent on the case as attorneys' fees and not as expert witness fees.

27. In supplemental Exhibit C-2, Brown eliminated attorneys' fees claimed for some duplicative entries and also for work that appears to be on another case he was pursuing for Guthrie as not applicable to this case.

28. Rebman objected to the hourly rate of the attorneys' fees submitted, questioned whether some hours were duplicative, and questioned whether some hours were expended in pursuit of other claims. Rebman also pointed out where attorneys' fees and paralegal fees were being submitted for Guthrie's unsuccessful summary decision motion. Finally, Rebman found a time entry for a case that did not appear to be related to Guthrie.<sup>5</sup>

29. There were 16 attorneys representing employees in personnel cases from 2011 through 2013 before this Commission, with two attorneys from Jefferson City.

30. There were other time slips that were not eliminated on supplemental Exhibit C-2 where Brown submitted and claimed attorneys' fees that were duplicative billings with the same or similar description for the same day and the same number of hours. These include:

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
116812	7/15/2013	Meet w/RGB; research Mtn to Dismiss	Moen	1.00	\$250.00	\$250.00
116813	7/15/2013	Meet w/RGB on atty fee case; research Mtn to Dismiss	Moen	1.00	\$250.00	\$250.00
116450	4/1/2013	Draft demand ltr to Jacob and Gibson	Brown	1.20	\$275.00	\$330.00

---

<sup>5</sup> Rebman's proposed attorneys' and paralegal fees were based on the exhibit from the hearing and not based on the supplemental C-2 exhibit and therefore differ in the entries noted, the total dollar amount, and the total hours. While we have taken into account Rebman's factual information regarding the entries, we have done so in light of the supplemental Exhibit C-2.

116451	4/1/2013	Draft demand ltr to Jacob & Gibson	Brown	1.20	\$275.00	\$330.00
116474	5/13/2013	Prepare witness list to file with Commission; go over with Cindy each witness's testimony	Brown	1.50	\$275.00	\$412.50
116553	5/13/2013	Review witness list; go over w/Cindy ea witness testimony	Brown	1.50	\$275.00	\$412.50
116478	5/24/2013	Letter (follow up) to Mike re witnesses to depos and available dates	Brown	.70	\$275.00	\$192.50
116540	5/24/2013	Letter to Mike re: witnesses to depose	Brown	.70	\$275.00	\$192.50
116541	6/17/2013	Prepare Rebman's outline; meet w/Cindy	Brown	5.20	\$275.00	\$1430.00
116542	6/17/2013	Complete final prep of Rebman's outline; meet w/Cindy	Brown	5.20	\$275.00	\$1430.00

The duplicate entries represent a total of 19.2 hours of attorney time.

31. The following billing does not appear to be rendered in connection with this case and represent attorneys fees on another case pursued by Guthrie:

Slip ID	Date	Description	Person	Hours	Rate	Slip Value
116471	5/11/2013	Finalize Appeal on being denied application for Merit position (2 <sup>nd</sup> PAB); go over	Brown	1.20	\$275.00	\$330.00

		with Cindy				
--	--	------------	--	--	--	--

The attorneys' fees total 1.20 hours.

32. The following billings for attorneys' fees are related to Guthrie's unsuccessful motion for summary decision:

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
116252	5/1/2013	Work on Mtn for Summary Resp; call Gracia; work on witnesses; memo on schedule; change Gracia's affidavit per call w/Gracia	Brown	3.00	\$275.00	\$825.00
116259	5/2/2013	Finalize Mtn for Summary Disposition; go over M. Pritchett's Discovery Schedule; ltr to Mike; work on Gracia's affidavit	Brown	3.50	\$275.00	\$962.50
116454	4/16/2013	Review cases and statutes re: DES & DOLIR; go over Merit System statutes; outline Mtn for Summary Disposition	Brown	4.50	\$275.00	\$1237.50
116455	4/17/2013	Work up 1 <sup>st</sup> draft of Summary Disposition	Brown	2.50	\$275.00	\$687.50
116457	4/18/2013	Dictate Summary Disposition Motion; read additional case law; make revisions in 1 <sup>st</sup>	Brown	1.70	\$275.00	\$467.50



		draft				
116462	4/27/2013	Go over & revise Mtn for Summary Disposition-plugging in cites and quotes & dictate	Brown	1.90	\$275.00	\$522.50

The attorneys' fees represent 17.1 total hours.

33. The following billings do not appear to be rendered in connection with this case and represent paralegal fees on another case pursued by Guthrie:

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
116677	7/29/2013	Prepare 1 <sup>st</sup> draft of MCHR Complaint	Rackers	.50	\$95.00	\$47.50
116679	7/30/2013	Prepare MCHR (con't from yesterday)	Rackers	5.18	\$95.00	\$492.44
116710	8/5/2013	Prepare and finalize MCHR Complaint; prepare exhibits; contact client re additional exhibit	Rackers	1.00	\$95.00	\$95.00
116711	8/6/2013	Prepare MCHR Exhibits, meet with client, confer with Roger; prepare copies & letter to LIRC; copies of all; mailings; scan and e-mail final copies to Client; FILE MCHR COMPLAINT	Rackers	1.00	\$95.00	\$95.00

These entries total 7.68 hours of paralegal time.

34. The following billings were either not rendered in connection with this attorneys' fees case because the description lists an entirely different client or because the work is for a date after this attorneys' fees case had gone to hearing:

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
116302	5/21/2013	Prepare EOA for Roger in Johnston case; letter to Pam Hoffman @ LIRC [client reference lists Johnston]	Rackers	.50	\$95.00	\$47.50
117611	3/18/2014	Outline deposition for Backer	Nichols	2.17	\$75.00	\$162.50
117615 <sup>6</sup>	3/19/2014	Outline deposition for Backer and memo to dave concerning atty fees	Nichols	1.25	\$75.00	\$93.75

These entries total 3.92 hours of paralegal time.

35. The following billing was paralegal time spent on Guthrie's unsuccessful motion for summary disposition:

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
116189	4/25/2013	Prepare Motion for Summary Disposition; Aff for Gracia Backer	Rackers	3.32	\$95.00	\$315.66

This entry totals 3.32 hours of paralegal time.

---

<sup>6</sup> We cannot ascertain from the entry whether this relates to this attorneys' fees case or pertains to the case that is apparently being worked on by Nichols. Regardless, the time spent is not separated

36. Brown charged paralegal fees for time entries that include transcribing and revising documents, copying, and calendaring duties. This is evident from the slip entries themselves and the examination of the corresponding time slip entries from Brown that reference work performed by Brown, and then similar work performed by the paralegal. Some slips contain entries that may or may not be paralegal work.

<b>Slip ID</b>	<b>Date</b>	<b>Description</b>	<b>Person</b>	<b>Hours</b>	<b>Rate</b>	<b>Slip Value</b>
115903	3/7/2013	Prepare final Appeal; make Roger's revisions and inserts; 3 copies of all exhibits	Rackers	4.21	\$95.00	\$399.77
116027	4/1/2013	Letter to Directors Jacob & Gibson	Rackers	.95	\$95.00	\$90.62
116099	4/18/2013	Letter to Judge Wynn; prepare exhibits; copy	Rackers	.50	\$95.00	\$47.50
116107	4/22/2013	Letter to Mike Pritchett re proposed joint pre-hearing schedule	Rackers	.25	\$95.00	\$23.75
116229 <sup>7</sup>	5/6/2013	Prepare Aff to Backer, Rv Mtn for summary disposition; pulled scheduling order (both P's & D's) emailed letter and aff to Backer	Rackers	.75	\$95.00	\$71.25

---

<sup>7</sup> This time slip also represents paralegal time spent on Guthrie's unsuccessful motion for summary disposition.

116232 <sup>8</sup>	5/1/2013	Prepare/redo Gracia affidavit; e-mails to gracia & Cindy; changes to letter to Pritchett & Winn	Rackers	1.00	\$95.00	\$95.00
116272	5/9/2013	Prepare pleadings; Petitioners witness list; letter to client; letter to gracia Backer; review e-mails; note to Roger	Rackers	1.77	\$95.00	\$168.18
116283	5/14/2013	letters to Gracia & Cindy; Witness list finalized, faxed and mailed	Rackers	.50	\$95.00	\$47.50
116403	6/12/2013	Prepare four depo notices; contact court reporter; letter to PAB; signatures by RGB; e-mail notices to Mike Pritchett & Kim Murphy; mail to atty & PAB	Rackers	.75	\$95.00	\$71.25
116435	6/19/2013	Letter to Cindy; draft letter to Pritchett; e-mail to Cindy	Rackers	.50	\$95.00	\$47.50
116645	7/24/2013	Letter to	Rackers	.33	\$95.00	\$31.67

---

<sup>8</sup> This time slip also represents paralegal time spent on Guthrie's unsuccessful motion for summary disposition.

		Pritchett with both original errata sheets; fax all to Midwest Litigations; kept copies for our files				
17588	3/18/2014	Calendared Briefing schedule; confer with Dave re transcript; looked for notice of transcript in Roger's stacks; phone calls re transcript ordering; called Roger re: ordering transcript.	Rackers	1.00	\$95.00	\$95.00
117762	4/3/2014	Revise proposed findings of fact per Dave's tapes	Rackers	2.64	\$95.00	\$251.25

These entries total 15.15 hours of paralegal time.

### **Conclusions of Law**

#### Legal Standard for Attorney Fee Applications

We have jurisdiction to hear the complaint in this case under § 536.087, which provides:

1. A party who prevails in an agency proceeding or civil action arising therefrom, brought by or against the state, shall be awarded those reasonable fees and expenses incurred by that party in the civil action or agency proceeding, unless the court or agency finds that the position of the state was substantially justified or that special circumstances make an award unjust.

“Prevail” means “obtains a favorable order, decision, judgment, or dismissal in a civil action or agency proceeding.” Section 536.085(3). An “agency proceeding” is “an adversary proceeding

in a contested case pursuant to a chapter in which the state is represented by counsel[.]” Section 536.085(1). A “contested case” is a “proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.010(2), RSMo 2000. The “state” is “the state of Missouri, its officers and its agencies.” Section 536.085(5). Section 621.075 requires that we determine such a case after an adversary proceeding. Therefore, the underlying case was a contested case and an agency proceeding.

#### Guthrie is a prevailing party

For purposes of § 536.085, Guthrie is a “party,” as her net worth did not exceed two million dollars at the time the Board initiated its proceedings. Section 536.085(2). Guthrie “prevailed” because the Department voluntarily reinstated her and afforded her all of the relief that this Commission could order under § 621.075. ***Greenbriar Hills Country Club v. Director of Revenue***, 47 S.W.3d 346, 353 (Mo. banc 2001) (“prevail” may also include obtaining a settlement).

While Guthrie is not required to prevail on all issues in order to obtain an award of attorneys’ fees, Guthrie is limited in her award of attorneys’ fees to the issues on which she prevailed. ***Sanders v. Hatcher***, 341 S.W.3d 762, 768 (Mo. App. W.D. 2011). Therefore, time spent on Guthrie’s unsuccessful motion for summary disposition may be excluded from the attorneys’ fees claim as it is an issue where Guthrie did not prevail.

#### Substantially Justified

As a prevailing party, Guthrie is entitled to an award of attorney’s fees and expenses unless we determine that either the Department’s position was substantially justified or that special circumstances exist that make an award unjust. Section 536.087.1. The record, including Rebman’s agreement as to payment of reasonable attorney’s fees, leads us to conclude that

Rebman was not substantially justified under § 536.087.3 in his dismissal of Guthrie and no special circumstances exist that make an award unjust. Therefore, attorney's fees and expenses are to be awarded.

#### Guthrie's Reasonable Fees

We conclude that the expenses of \$1,974.24, unchallenged by the Department, were reasonable costs and grant these expenses to Guthrie.

#### Guthrie's Attorney's Fees

##### *Award of Fees Over \$75.00 per Hour Statutory Limit*

Having found the Department's position not substantially justified, and that no special circumstances make an award of fees unjust, Guthrie is entitled to an award of reasonable fees and expenses. Section 536.087.1. Section 536.085(4) defines that term:

(4) **“Reasonable fees and expenses”** includes the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, engineering report, test, or project which is found by the court or agency to be necessary for the preparation of the party's case, and reasonable attorney or agent fees. The amount of fees awarded as reasonable fees and expenses shall be based upon prevailing market rates for the kind and quality of the services furnished, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state in the type of civil action or agency proceeding, and **attorney fees shall not be awarded in excess of seventy-five dollars per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee[.]**

(Emphasis added). We must apply the Missouri statutes as the legislature has written them.

Because this Commission was created by state statutes, we have only such authority as the statutes give us. *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974). We do not have authority to add to or subtract from the terms of the statutes or to make an exception. *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

Guthrie's argument that no attorney would represent her for \$75 does not, by itself, constitute a special factor. *Sprenger v. Missouri Dept. of Public Safety*, 340 S.W.3d 109, 113 (Mo.App. W.D. 2010). Guthrie did not try to find any attorney other than Brown to take her case. Guthrie went directly to Brown and did not seek out any other options. There were other attorneys in the area who handled personnel cases. The evidence that Guthrie felt pressured by the time deadline for her decision to retire or be terminated, while unfortunate, is a situation faced in many personnel cases. Guthrie had the same 30 days under § 621.075, § 36.390, Regulation 1 CSR 20-3.070(5), and 1 CSR 20-4.010 within which to appeal as other merit employees. No attorneys refused Guthrie representation. There is insufficient evidence before us to conclude that there was a limited number of attorneys who could handle Guthrie's case.

We also find that Guthrie's argument that other local attorneys charged more than \$75 per hour does not constitute a special factor. In analyzing a similar federal statute, the United States Supreme Court stated:

If "the limited availability of qualified attorneys for the proceedings involved" meant merely that lawyers skilled and experienced enough to try the case are in short supply, it would effectively eliminate the \$75 cap—since the "prevailing market rates for the kind and quality of the services furnished" are obviously *determined* by the relative supply of that kind and quality of services. "Limited availability" so interpreted would not be a "special factor," but a factor virtually always present when services with a market rate of more than \$75 have been provided. We do not think Congress meant that if the rates for all lawyers in the relevant city—or even in the entire country—come to exceed \$75 per hour ..., then that market-minimum rate will govern instead of the statutory cap.

*Pierce v. Underwood*, 487 U.S. 552, 571-72 (1988). We apply the court's reasoning to this case. Accepting Guthrie's argument for a higher rate of attorneys' fees would mean that every case before us would exceed the \$75 cap. We are not free to set aside the text of § 536.085(4) to reach that conclusion.



Further, the issues in this case were typical administrative law issues found in many personnel cases and did not require specialized knowledge or handling.

[T]he exception for “limited availability of qualified attorneys for the proceedings involved” must refer to attorneys ... having some distinctive knowledge or specialized skill needful for the litigation in question—as opposed to an extraordinary level of the general lawyerly knowledge and ability useful in all litigation. Examples of the former would be an identifiable practice specialty such as patent law, or knowledge of foreign law or language.

**Sprenger**, 340 S.W.3d at 113 (citations omitted). Although Brown has much experience in litigation, administrative law and state personnel cases, and is a capable advocate, there is no distinctive knowledge or a specialized skill needed in this litigation. This conclusion is also consistent with **Baker v. Department of Mental Health**, 408 S.W.3d 228, 239 (Mo.App. W.D. 2013), where the court found that the concept of “factually complex” would apply broadly to almost any administrative proceeding or civil action by or against the State. Based upon credible evidence before us, we cannot conclude that this case was more factually complex than any other personnel case. Without factual complexity and without evidence to support a limited number of qualified attorneys available, we must conclude that there is no special factor. *Id.* at 239-240. Therefore, we reject Brown’s claim for attorneys’ fees in this case at the rate of \$275 and \$250 per hour, and we limit the attorneys’ fees to the rate of \$75 per hour.

#### *Number of Hours Claimed*

With regard to the number of attorney and staff hours for which a prevailing party seeks recovery, § 536.085(4) defines “reasonable fees and expenses” as including “reasonable attorney...fees.” One of the relevant factors for determining the reasonableness of attorney fees in cases applying § 536.085(4) is “the number of hours reasonably expended on the litigation.” **Hutchings ex rel. Hutchings v. Roling**, 193 S.W.3d 334, 351 (Mo. App. E.D. 2006).

The fee applicant bears the burden to establish and prove the claimed number of hours in a case. See *Walton v. Dawson*, 2015 WL 331628 (E.D. Mo 2015). Hours that are redundant should be excluded from a fee request. *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). We have the authority to excise redundant hours when a party fails to do so. Like courts, we are not authorized to be generous with the state's money. See *Am. Civil Liberties Union of Ga. v. Barnes*, 168 F.3d 423, 428 (11th Cir. 1999).<sup>9</sup> Therefore, we disallow the duplicative billings and reduce the total attorney hours by 19.2 hours.

We disallow the attorneys' fee billing for time spent on another case pursued by Guthrie and reduce the hours by 1.20 hours. Finally, we disallow the attorneys' fee billing by 17.1 hours for time spent in pursuit of the unsuccessful motion for summary disposition. Therefore, the attorneys' fees will be reduced by a total of 37.5 hours.

#### *Guthrie's Paralegal fees*

Nothing in statute sets the rate for paralegal fees. Because § 536.085(4) limits the attorney fee to \$75 per hour, we conclude that the paralegal fee should also be limited to \$75 per hour. There is no basis in the statute for a paralegal to be compensated at a higher hourly rate than what the statute sets for an attorney. The record is devoid of any information about the qualifications of the paralegal who performed the work in this case. The evidence was limited to the itemized time slips. In our analysis, since the paralegal essentially performs work that an attorney would otherwise need to do, we conclude it is reasonable for an award of paralegal fees to be at or less the statutory rate for attorneys' fees. Therefore, we conclude paralegal fees are limited to \$75 per hour.

Brown claimed a rate of \$95 per hour in his billing records. We disallow that rate and limit Brown to \$75 per hour for the work of his paralegal.

---

<sup>9</sup> This case also points out that those opposing fee applications have a similar obligation to analyze and assess fee applications.

There is no specific direction in the statutes as to the handling or examination of paralegal fees. Section 536.085(4). In *Newport v. Newport*, 759 S.W.2d 630 (Mo.App. S.D. 1988), the court awarded attorneys' and paralegal fees in accordance with an itemized bill and stated that in cases in which attorneys' fees may be recovered, reasonable paralegal fees are allowable. *See also Hawkins v. Anheuser-Busch, Inc.*, 697 F.2d 810, 817 (8th Cir. 1983).

Brown properly eliminated from his billing time spent in pursuit of other cases he was handling on behalf of Guthrie. There were additional entries for paralegal time spent on Guthrie's other cases that Brown missed. We eliminate 7.68 hours of time slips where the paralegal worked on another case for Guthrie. Additionally, Brown's paralegal spent time on work for a date that was after the resolution of the personnel case and the hearing in this case. There is also the obvious error where a different case (not Guthrie's) appears to be billed. We eliminate 3.92 hours of paralegal time for those time slips.

Additionally, paralegal time was submitted for the unsuccessful motion for summary disposition. Since Guthrie did not prevail on this issue, we reduce the paralegal hours by 3.32 hours.

A paralegal is generally defined as a:

nonlawyer, qualified through education, training, or work experience, who is employed or retained by an attorney, a law office,... in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a knowledge of legal concepts such that, absent such assistant, the attorney would perform the assigned task. Conduct of client interviews, preparation of pleadings, motions, and other documents relating to the institution and conduct of legal proceedings, and selection, compilation and interpretation of technical information from references such as digests, jurisprudences, encyclopedias, treatises, and practice manuals are functions of a substantive legal nature within the contemplation of this definition; **transcription of the work product of an attorney, photocopying, preparation of correspondence and billing documents, and other similar functions are clerical in**

**nature and do not qualify as work of a substantive legal nature within the meaning of this definition.**

73 A.L.R.4th 938. In examining a request for paralegal fees to be paid, because the work performed is under the direction and supervision of an attorney and in effect replaces the work of the attorney, the applicant bears the burden to establish and prove that the fees requested are in the nature of legal fees and are not clerical. “Where . . . there is a “lack of documentation or testimonial support the court may make the award on its own experience,” *Norman v. Housing Authority of City of Montgomery*, 836 F.2d 1292, 1303 (11<sup>th</sup> Cir. 1988) *See also*, 21 Fed Proc § 50:1194. Clerical or secretarial tasks should not be billed at a paralegal rate, no matter who performs them. Further, like attorneys’ fees, paralegal fees should be reasonable and not duplicative of other legal fees. *Hawkins v. Anheuser-Busch, Inc.*, 697 F.2d 810, 817 (8<sup>th</sup> Cir. 1983). Paralegal fees can be disallowed where a court is unable to properly assess a submission. *Walton*, 2015 WL 331628.

In examining the time slips for the paralegal work that was performed in this case, some of the services performed by the paralegal were clerical in nature. Billing entries for transcribing and revising documents, copying, calendaring, and preparation of correspondence are not work that requires knowledge of legal concepts to perform. Brown charged paralegal fees for time entries that included work that is questionably clerical. There are some time slips billed where the paralegal hours by the description may be a mixture of what may include paralegal time and what appears to be clerical work. Without any other evidence to evaluate and assess, it would only be a guess to ascertain how much time should be allotted. We disallow an additional 15.15 hours of paralegal time. Therefore, the paralegal time is reduced by 30.07 hours.

*Summary of attorney's and paralegal fees calculation*

Brown submitted a total claim for 250.04 hours of attorney and paralegal time. We have disallowed a total of 37.5 hours of attorney time and 30.7 hours of paralegal time. This leaves a total of 181.84 hours x \$75 per hour or \$13,638.00.

**Conclusion**

We award Guthrie attorneys' and paralegal fees of \$13,638.00 and \$1,974.24 in costs.

SO ORDERED on March 16, 2015.

/s/ Audrey Hanson McIntosh  
AUDREY HANSON MCINTOSH  
Commissioner